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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,916	05/24/2001	John Rodriguez	LS/0026.00	5324

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT PAPER NUMBER

3623

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/865,916

Applicant(s)

RODRIGUEZ, JOHN

Examiner

Susanna M. Diaz

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following <sup>objections</sup> rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed <sup>claim</sup> amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see attached document.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

*Susanna Diaz*  
Susanna M. Diaz  
Primary Examiner  
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Continuation of 5. Applicant's reply has overcome the following rejection(s): While the claim amendments will not be entered, the amendments to the specification and drawings will be entered, thereby overcoming the objections to the drawings and specification.

***Attachment to Advisory Action (dated May 12, 2006)***

Applicant argues, "The merchant site simply fulfills orders received without regard to a 'ranking.' Therefore, Bezos fails to teach 'receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items; [and] ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria.'" (Page 10 of Applicant's response) The claimed invention does not define who or what sets the specified criteria; therefore, any identification of a preferred merchant can somehow be interpreted as based on specified criteria. Also, the claims recite ranking "one or more fulfillers." If there is only one identified fulfiller, a single identification of a merchant of interest is effectively a ranking of one fulfiller, as taught by Bezos. By Applicant's own admission, "Thus, for example, a web site that reviews books is able to refer web traffic to the merchant site so that a reader can purchase the book from the [merchant] (Bezos, Figure 6)." (Page 9 of Applicant's response) This merchant site can be recommended based on their ability to provide books, i.e., the merchant site has been ranked as an available, and therefore favorable at some level, supplier of books (the specified criteria being a supplier of books).

Applicant argues that Bezos fails to address the limitations "when (if) all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items" and "otherwise splitting the order by assigning fulfillment of individual order item to the most-favorable fulfillers that collectively can fulfill all order item." Again, the claims leave open the option of only identifying one fulfiller and these limitations are conditional alternatives. The claimed

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invention does not require that both conditions be actively evaluated and decided upon in all scenarios. Only one of these alternatives needs to be carried out. Bezos allows its customers to order directly through a featured merchant (col. 7, lines 6-20). In this particular scenario, the Examiner submits that it has been determined that all order items of the order can be fulfilled by this single fulfiller (i.e., the merchant), based on the fact that the merchant can offer the customer's products of interest to the customer.

A similar argument is made regarding the Spiegelhoff reference. Applicant argues:

...Thus even when an entire order can be fulfilled by a primary wholesaler, the order is still split between the primary and the secondary wholesaler, according the method of Spiegelhoff. Further, because the "primary" wholesaler is defined by Spiegelhoff in terms of a minimum order amount, no single secondary wholesaler will be able entirely fulfill an order. As a result, neither kind of wholesaler will be able to entirely fulfill an order request. Therefore Spiegelhoff fails to teach "when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items; otherwise splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items." (Pages 14-15 of Applicant's response)


By Applicant's own admission, Spiegelhoff has made a decision to not have the primary wholesaler fulfill the order; therefore, Spiegelhoff's primary wholesaler cannot fulfill all order items, as per Spiegelhoff's decision process. Spiegelhoff instead performs the claimed alternative of splitting the option, thereby meeting the claim language.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Susanna M. Diaz  
Primary Examiner  
Art Unit 3623

May 12, 2006